

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION - COMPLIANCE BUREAU

Mary Ann Shulman, Esq. SBN 190164
45 Fremont Street, 21st Floor
San Francisco, California 94105
Telephone: 415/538-4133
Facsimile: 415/904-5490

Attorneys for the
California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
SAN FRANCISCO**

In the Matter of the License and Licensing
Rights of:

File No. DISP-2009-00635

OLD REPUBLIC TITLE COMPANY; and,
OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY,

ACCUSATION

(Insurance Code §§12389.2, 12401.1,
12401.3(a), 12401.7, 12404, 12405, 12406,
12414.15, 12414.16, and 12414.27);

**NOTICE OF NONCOMPLIANCE AND
HEARING**

(Insurance Code §§12389.2, 12401.1,
12401.3(a), 12401.7, 12404, 12405, 12406,
12414.14, 12414.15, 12414.16, and 12414.27);

Respondents.

DEMAND FOR MONETARY PENALTY
(Insurance Code §§12409, 12411, 12414.14,
12414.15, 12414.16, 12414.27, and 12976).

The Insurance Commissioner of the State of California ("Insurance Commissioner") in his
official capacity alleges that:

JURISDICTION AND PARTIES

1
2 1. Respondent, OLD REPUBLIC TITLE COMPANY (collectively "OLD
3 REPUBLIC") is licensed by the Insurance Commissioner to act as an Underwritten Title
4 Company in the State of California, pursuant to §12389 of the California Insurance Code¹. OLD
5 REPUBLIC TITLE COMPANY is licensed to transact business as an Underwritten Title
6 Company, including the handling of escrow business, in the counties of Alameda, Contra Costa,
7 El Dorado, Fresno, Los Angeles, Madera, Marin, Merced, Monterey, Napa, Orange, Placer,
8 Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San
9 Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tehama,
10 Tulare, Ventura, Yolo, and Yuba. OLD REPUBLIC TITLE COMPANY is licensed to transact
11 business as an Underwritten Title Company, excluding the handling of escrow business, in the
12 counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial,
13 Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, Santa
14 Barbara, Shasta, Sierra, Siskiyou, Trinity, and Tuolumne.

15
16
17 2. Respondent, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
18 (collectively "OLD REPUBLIC"), holds a Certificate of Authority issued by the Insurance
19 Commissioner to act as a title insurer in the State of California, pursuant to §700 et seq. of the
20 California Insurance Code.

21
22 3. Respondents are subsidiaries of parent company Old Republic International
23 Corporation, a Delaware corporation.

24 4. In April 2009, the California Department of Insurance ("Department") began
25 examining the operations of OLD REPUBLIC, pursuant to California Insurance Code §§730,
26 733, 12407, 12414.21 and 12414.22, after the Department received written complaints alleging

¹ Unless otherwise stated, all references are to the California Insurance Code.

1 nonconformance with filed rates for residential title insurance and escrow services in California.
2 These complaints raised the issue of whether certain rating and underwriting practices
3 implemented by OLD REPUBLIC between January 1, 2009 going forward constituted violations
4 of California's insurance laws. The investigation included an examination of the books and
5 records of OLD REPUBLIC to determine the accuracy of the application of certain filed rates by
6 OLD REPUBLIC.
7

8 5. California Insurance Code §700 provides that "After the issuance of a certificate of
9 authority, the holder shall continue to comply with the requirements as to its business set forth in
10 this code and in the other laws of this state."

11 6. California Insurance Code §12389.2 provides that "After issuance or reissuance of
12 a license to act as an underwritten title company, the holder shall continue to comply with the
13 requirements as to its business set forth in §12389.1 and in the other applicable sections of this
14 code, and in the other laws of this state."
15

16 7. California Insurance Code §12401.1 requires that "Every title insurer, underwritten
17 title company, and controlled escrow company shall file with the commissioner its schedule of
18 rates, all regularly issued forms of title policies to which such rates apply, and every modification
19 thereof which it proposes to use in this state. Every filing shall set forth its effective date, which
20 shall be not earlier than the 30th day following its receipt by the commissioner."
21

22 8. California Insurance Code §12401.3(a) mandates that "Rates shall not be excessive
23 or inadequate, as herein defined, nor shall they be unfairly discriminatory."

24 9. California Insurance Code §12401.7 provides that "No title insurer, underwritten
25 title company... shall use any rate in the business of title insurance prior to its effective date nor
26 prior to the filing with respect to such rate having been publicly displayed and made readily
available to the public...."

1 10. California Insurance Code §12340.7 defines rates as the charge or charges made to
2 the public by a title insurer, an underwritten title company or a controlled escrow company, for all
3 services it performs in transacting the business of title insurance.

4 11. California Insurance Code §12414.27 provides, in relevant part, that “no title
5 insurer, underwritten title company or controlled escrow company shall charge for any title policy
6 or service in connection with the business of title insurance, except in accordance with rate filings
7 which have become effective.”

8 12. California Insurance Code §12404 provides, in pertinent part, that “it is unlawful
9 for any title insurer, underwritten title company, or controlled escrow company to pay, directly or
10 indirectly, any commission, compensation, or other consideration to any person as an inducement
11 for the placement or referral of title business.”

12 13. California Insurance Code §12404(b)(2) defines “person” as “any individual or
13 entity who is any owner or prospective owner, lessee or prospective lessee of real property or any
14 interest therein, any obligee or prospective obligee of an obligation secured or to be secured either
15 in whole or in part by real property or any interest therein, or any person who is acting or who is
16 in the business of acting as agent, representative, attorney, or employee of those persons”
17 (hereafter collectively referred to as “12404 persons”).

18 14. California Insurance Code §12405 provides, in relevant part, that “No title insurer,
19 no controlled escrow company and no underwritten title company shall quote any fee or make any
20 charge for a title policy to any person which is less than that currently available to others.... The
21 amount by which any fee or charge is less than that called for by the then currently effective
22 schedule or fees and charges of the title insurer is an unlawful rebate.”

23 15. California Insurance Code §12406 provides that “No title insurer shall issue any
24 title policy in any transaction in connection with which it or any person which is ...an
25
26

1 underwritten title company by reason of its relationship with such title insurer ...has made or
2 contemplates making any unlawful rebate in violation of Section 12405.”

3 16. California Insurance Code §12409 states that “Every title insurer, controlled
4 escrow company, and underwritten title company which pays any commission or which makes
5 any unlawful rebate in violation of this article shall be liable to the people of California for five
6 times the amount of that commission or unlawful rebate....”

7
8 17. California Insurance Code §12411 provides that “The Commissioner may after a
9 hearing suspend or revoke the certificate of authority of any title insurer or the license of any
10 underwritten title company....”

11 18. California Insurance Code §12414.16 provides that if, at conclusion of a hearing
12 pursuant to §12414.15, the Commissioner finds that rates, rating plans or rating systems made or
13 used by Respondents violate the provisions of Article 5.5 of Division 2, Part 6, Chapter 1
14 (beginning with §12401), the Commissioner may issue an order for corrective action. If the
15 violations alleged which have been the subject matter of the hearing are found to constitute
16 willful violations, the Commissioner may suspend or revoke, in whole or in part, the certificate of
17 authority of such title insurer or license of such underwritten title company or controlled escrow
18 company.
19

20 ACCUSATION / NOTICE OF NONCOMPLIANCE

21 FACTUAL ALLEGATIONS

22
23 19. On or about April 2009, the Department received written complaints from persons
24 concerned about nonconformance with filed rates by OLD REPUBLIC. The Department
25 investigated these complaints. Commencing about April 2009, the Department conducted an
26 examination of OLD REPUBLIC’S rating and underwriting practices during the period from
January 1, 2009 going forward. The examination focused on determining whether OLD

1 REPUBLIC was accurately applying its filed "Portfolio Residential Refinance Rate" for lenders'
2 title insurance policies and its filed escrow rates for the "Escrow Contract Rate for Multiple Loan
3 Transactions." The examination included a limited review of the rates, rating plans, forms and
4 rules made or adopted by OLD REPUBLIC for use in California, and a limited examination of
5 policy files and related supporting records; and,

6
7 20. As a result of the examination, the Department identified a high incidence of rating
8 errors in which the "Escrow Contract Rate for Multiple Loan Transactions" was incorrectly
9 applied in transactions in which lenders did not meet the qualification criteria of such filed rates,
10 resulting in undercharges; and,

11 21. As a result of the examination, the Department identified a high incidence of rating
12 errors in which the "Portfolio Residential Refinance Rate" was incorrectly applied in transactions
13 in which lenders did not meet the qualification criteria for such filed rates, resulting in
14 undercharges; and,

15
16 22. Such alleged undercharges totaled not less than one hundred ninety-nine thousand
17 five hundred dollars (\$199,500.00). The total number of residential title transactions with rating
18 errors during the relevant time period and the amount of undercharges will be determined at the
19 hearing.

20 STATUTORY ALLEGATIONS

21
22 23. The facts alleged herein demonstrate that OLD REPUBLIC failed to adhere to its
23 filed rates, ratings plans, or rating systems, in violation of California Insurance Code §§12401.1,
24 12401.3, 12401.7, and 12414.27, and, if willful, constitute grounds for the Insurance
25 Commissioner to suspend or revoke the Certificate of Authority of such title insurer and license
26 of such underwritten title company pursuant to California Insurance Code §12414.16; and,

1 24. The facts alleged herein demonstrate that OLD REPUBLIC has quoted or made
2 charges for a title policy or service to 12404 persons that are less than that currently available to
3 others as an inducement for the placement or referral of title business, in violation of §§12404,
4 12405, and 12406, and constitute grounds for the Insurance Commissioner to assess monetary
5 penalties pursuant to California Insurance Code §12409 and to restrict, suspend or revoke the
6 licenses and licensing rights of OLD REPUBLIC pursuant to California Insurance Code §§12409
7 and 12411; and,

9 25. The Insurance Commissioner hereby notifies OLD REPUBLIC that, based upon
10 the facts alleged herein, OLD REPUBLIC has not charged rates for any title policy or service in
11 connection with the business of title insurance in accordance with rate filings which have become
12 effective pursuant to Article 5.5 (commencing with §12401) of Chapter 6, Part 4 of Division 2
13 and that OLD REPUBLIC has ten (10) days to comply with the provisions of those Sections and
14 to correct such noncompliance in the manner as specified by the Commissioner, or OLD
15 REPUBLIC will be considered to be willfully failing to comply; and,

17 26. The Insurance Commissioner further notifies OLD REPUBLIC that if
18 Respondents fail to make the changes necessary to correct such noncompliance as specified by
19 the Commissioner, a public hearing will be set pursuant to California Insurance Code §12414.15
20 to consider the allegations herein. If, at the conclusion of the hearing, the Commissioner finds
21 that any rate, rating plan or rating system violates the applicable provisions of the Insurance
22 Code, he may issue an order for corrective action; and,

24 27. The Insurance Commissioner further notifies OLD REPUBLIC that if the
25 noncompliance alleged herein is found to be willful, the Commissioner may suspend or revoke
26 the licenses and licensing rights of OLD REPUBLIC.

DEMAND PURSUANT TO
CALIFORNIA INSURANCE CODE §§12409, 12411, 12414.15, 12414.16, 12414.27, and
12976

28. PLEASE TAKE NOTICE that, as a result of the actions of OLD REPUBLIC, and pursuant to California Insurance Code §12409, OLD REPUBLIC is liable to the people of California in the amount of five times the amount of unlawful rebates as determined at hearing; and,

29. As a result of OLD REPUBLIC'S actions as set forth hereinabove, and pursuant to California Insurance Code §§12404, 12405, and 12406, demand is hereby made to OLD REPUBLIC to cease and desist from engaging in illegal rebate activities; and,

30. As a result of OLD REPUBLIC'S actions as set forth hereinabove, and pursuant to California Insurance Code §§12414.15, 12414.16, 12414.27, and 12976, demand is hereby made to OLD REPUBLIC to cease and desist from failing to adhere to filed rates, rating plans, rules, and rating systems; and,

31. As a result of OLD REPUBLIC'S actions as set forth hereinabove, and pursuant to California Insurance Code §§12414.15, 12414.16, 12414.27, and 12976, demand is hereby made to OLD REPUBLIC to correct the noncompliance in the manner specified by the Commissioner; and,

32. Demand is hereby made to OLD REPUBLIC for the imposition of monetary penalties as provided by law and for such other equitable relief as may be necessary to redress Respondents' violations of enumerated California statutory law; and,

33. Demand is hereby made to OLD REPUBLIC for such other and further relief as may be just and proper.

WHEREFORE, the Insurance Commissioner prays for the following:

1 1. An Order to Cease and Desist against OLD REPUBLIC TITLE COMPANY and
2 OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY from failing to file each rate
3 and/or failing to adhere to its filed rates, rating plans, rules, and rating systems, in violation of
4 California Insurance Code §§12401.1, 12401.3(a), 12401.7, and 12414.27; and,

5
6 2. An Order to Cease and Desist against OLD REPUBLIC TITLE COMPANY and
7 OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY from engaging in illegal
8 rebate activities, in violation of California Insurance Code §§12404, 12405, and 12406; and,

9 3. The imposition of Notice on OLD REPUBLIC TITLE COMPANY and OLD
10 REPUBLIC NATIONAL TITLE INSURANCE COMPANY that if, after conclusion of the
11 hearing, the rating violations which are the subject of the hearing are found to be willful,
12 Respondent will be subject to the possible suspension or revocation of its licenses and licensing
13 rights, pursuant to California Insurance Code §12414.16; and,

14
15 4. The imposition of Notice on OLD REPUBLIC TITLE COMPANY and OLD
16 REPUBLIC NATIONAL TITLE INSURANCE COMPANY that they have ten (10) days within
17 which to comply with the provisions of California Insurance Code §§12404, 12405, 12406, and
18 12414.27. If OLD REPUBLIC TITLE COMPANY and OLD REPUBLIC NATIONAL TITLE
19 INSURANCE COMPANY do not comply, the noncompliance will be considered willful, and
20 will be subject, after hearing, to the possible suspension or revocation of its licenses and licensing
21 rights, pursuant to California Insurance Code §12411; and,

22
23 5. The imposition of monetary penalties as provided by law, and for such other
24 equitable relief as may be necessary to redress Respondents' violations as set forth above; and,

25 //

26 //

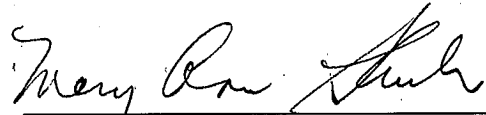
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

6. The imposition of such other and further relief as may be just and proper.

Dated: December 30, 2009.

STEVE POIZNER
Insurance Commissioner

By:



Mary Ann Shulman
Senior Staff Counsel